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No. 85-1363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TIMOTHY V. O'MAHONY,

Petitioner,

v.

CHICAGO TRANSIT AUTHORITY,
a municipal corporation,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether there is a split amongst the federal courts of appeals as to the appropriate determination of the stigmatizing character of charges of incompetence as it relates to a public employee's Fourteenth Amendment liberty interest or whether such a determination is a finding of fact that is not a proper basis for granting certiorari.
2. Whether petitioner has a Fourteenth Amendment property interest in continued employment where state statutes have granted the employer the right to abolish petitioner's position at any time, in its sole discretion.
3. Whether an exception should be recognized to the prohibition against an employee bringing a cause of action in federal court under the Urban Mass Transportation Act, 49 U.S.C. Section 13(c), to enforce a § 13(c) agreement, when it is alleged by the employee that his union failed to provide adequate representation.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner's "Statement of the Case" is overly argumentative and inaccurate. It fails to include essential details regarding the decision below and other background information. Accordingly, Respondent Chicago Transit Authority provides the following statement.

A. Factual Background

The Chicago Transit Authority (hereinafter "CTA") is a municipal corporation formed and operated under the Illinois Metropolitan Transit Authority Act (Ill. Rev. Stat. Ch. 111⅔, § 301 *et seq.* (1983 and Supp. 1984) to provide public transportation in and around the City of Chicago. Prior to September, 1981, the petitioner was employed by the CTA as part of an internal security force, numbering approximately 107 employees.

At all times relevant, the CTA was signatory to a collective bargaining agreement with Local 241 of the Amalgamated Transit Union (hereinafter "Local 241" or "the Union") effective December 1, 1979 through November 30, 1982. That bargaining agreement set forth the terms and conditions of employment applicable to unionized employees of the CTA's security force department, including petitioner.[1] The bargaining agreement contained, *inter alia*, a grievance arbitration procedure that included a provision for final and binding arbitration as to "the construction and application of the specific terms of this Agreement and/or to the matters referred . . . for arbitration."

On September 28, 1981, the CTA's Executive Director issued an executive order which provided, effective that date, that "The Chicago Police Department has assumed all security functions for the Chicago Transit Authority." On September 29, 1981, the security department was discontinued and the employees were permanently discharged. Discharge notices issued to the security department em-

[1] Of the total 107 employees, approximately 59 were included in the bargaining unit represented by Local 241. The remaining security force employees were excluded from that unit by virtue of supervisory duties.

ployees recited two reasons for termination of the security department: lack of funds and ineffectiveness of the department.

On September 29, 1981, the Union filed a grievance asserting that the CTA's discontinuance of the security department violated the collective bargaining agreement. The parties submitted the grievance to arbitration. Hearings covered 12 days in October, November, and December, 1981. The Union asserted at the arbitration hearing that the termination of the security department was an act of subcontracting which violated the bargaining agreement. The Union also asserted that the CTA's actions violated an alleged letter agreement between the union and the CTA Chairman which stated there would be no layoffs for the term of the agreement for certain full-time employees, depending on their length of seniority and continuous service.

On April 30, 1982, the arbitrator issued an award dismissing the Union's grievance in its entirety. In pertinent part, the arbitrator ruled that the CTA's termination of the security department was justified by economic considerations, was implemented in good faith, and did not violate any provision of the bargaining agreement. In addition, the arbitrator ruled that the CTA Chairman's letter governing layoffs was inapplicable to the CTA's permanent discontinuance of the security department.

B. Proceedings Below

On September 8, 1982, the petitioner and three other named plaintiffs filed a complaint in federal district court on behalf of "members of the class of unionized security personnel of the Chicago Transit Authority" challenging the legality of their discharge from employment by the CTA.

Count I of the complaint alleged that the security department was discharged in violation of the terms of an applicable labor protective agreement negotiated pursuant to § 13(c) of the Urban Mass Transportation Act (UMTA), 49 U.S.C. § 13(c) between the CTA and Local 241.

Count II of the complaint alleged that the security force was discharged without due process of law in violation of a constitutional property interest in continued employment. Under the allegations of the complaint, a continued right to public employment was created by the terms of the applicable collective bargaining agreement and by the terms of the letter from the CTA Chairman to Local 241 regarding layoff of employees.

In addition, Count II alleged that the security force was discharged without due process of law in violation of a constitutional liberty interest. According to the complaint, the security force employees were subjected to public accusations of malfeasance and criminal conduct by then Mayor Jane Byrne and other city officials at the time of their discharge.

On August 30, 1983, the district court issued an opinion granting, in part, the CTA's motion to dismiss the complaint (B-1).[2] The court dismissed Count I on the grounds of lack of jurisdiction based on this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982). The court held that the *Jackson* decision made it clear that § 13(c) does not create federal causes of action for breaches of 13(c) agreements or underlying collective bargaining agreements. The lower court noted that the *Jack-*

[2] References to "A-____" through "E-____" are to the appendix included in petitioner's Petition For Writ of Certiorari.

son Court held that the legislative history indicated that Congress intended those contracts to be governed by State law applied in State courts.

With respect to Count II, the court dismissed plaintiffs' claims based on deprivation of property interest without due process for two reasons. First, the court found that state statutory law creates no property right to continued employment where a department is abolished for economic reasons as opposed to termination for cause. The court held that the CTA exercised its statutory right to abolish the security force (B-2).

In addition, the court rejected the employees' contention that a continued right to public employment was created under the terms of the letter agreement dated June 20, 1980, between the CTA Chairman and Local 241. The district court, relying on collateral estoppel, stated that this matter was raised in the arbitration proceeding and that the arbitrator specifically found that the letter referred to layoffs and had no application to the abolishment of the department. The court held the finding of the arbitrator to be binding and final between the parties (B-3).

The court declined to dismiss the remaining portion of Count II regarding the deprivation of a constitutional liberty interest.

In February, 1985, the CTA filed a motion for summary judgment regarding the remaining portions of Count II, along with supporting evidence. The plaintiffs filed a response in opposition, along with newspaper articles and other documents, in support of their claim that they were deprived of their liberty interest.

Thereafter, on March 12, 1985, the district court entered its order granting CTA's motion for summary judgment

with respect to the remaining portion of Count II of the Complaint and dismissed the action (C-1). Viewing the evidence in the light most favorable to the plaintiffs, the court held that the comments attributed to city officials in newspaper articles about which the plaintiffs complained were not stigmatizing and did not implicate the plaintiffs' liberty interests (C-2). The court found that the published comments accused the security force, as a whole, of incompetence and did not seriously damage the individual plaintiffs' standing and associations in the community. Also, since the comments of incompetence were directed towards all 107 security force employees, the court stated that in this case any possible damage was sufficiently diluted so as not to implicate an individual plaintiff's liberty interest. (C-4, 5)

Petitioner and the three other named plaintiffs appealed both decisions to the United States Court of Appeals for the Seventh Circuit. After the appeal was fully briefed and argued, the court issued its order, on November 15, 1985, affirming the district court's judgment for the reasons stated in that court's two opinions (A-1).

On February 13, 1986 petitioner Timothy V. O'Mahony filed with this Court a *pro se* petition for a writ of certiorari. The three other named plaintiffs in the proceedings below were not included in the petition.

SUMMARY OF REASONS FOR DENYING PETITION

Petitioner asserts that the decision below is in conflict with the decisions of other courts of appeals regarding the appropriate determination of the stigmatizing character of charges of incompetence raised at the time of petitioner's discharge. Petitioner mischaracterizes the decision below as one in which the court mechanically labeled and excluded charges of incompetence from its definition of stigma, without regard to the overall facts. However, in the present case, the court thoroughly reviewed the evidence before it and concluded that there was no stigma involved in the charges of incompetence made at the time the security department was abolished and that a reasonable person could not conclude that the security department employees were accused of any criminal activity.

The conflict claimed by petitioner is mere fabrication. The factual circumstances in each of the cases claimed by petitioner to be in conflict with the decision below are so different that they preclude actual comparisons. Instead, it is obvious that the present petition is merely an attempt to have this Court review the findings of fact made by the court below. This is not a proper basis for the granting of certiorari.

Petitioner also claims that he has a protected property interest in his employment that was violated by his discharge. However, the court below properly dismissed this claim on the basis that governing Illinois statutes provide the CTA with the authority to abolish petitioner's position at any time and thus, petitioner had no property interest in his job.

To support this argument, petitioner simply refers to Ill. Rev. Stat. Ch. 111⅔, § 328, which provides that CTA employees may be discharged only for cause. However, the court below found that since the department in which petitioner worked was abolished by the CTA, the just cause provision did not apply. Petitioner has not provided any authority for his argument other than the statute, itself, which the court below found was not applicable.

Finally, petitioner asserts that he has a right to bring an action in federal court under the Urban Mass Transportation Act (UMTA), 49 U.S.C. Section 13(c), to enforce an agreement between the CTA and Local 241. The court below dismissed petitioner's claim on the basis that *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15 (1982), held that § 13(c) of UMTA does not create a federal cause of action to enforce 13(c) agreements and that Congress intended those contracts to be enforced pursuant to state law in state courts.

However, petitioner claims that special circumstances present in this case (*i.e.*, his union's failure to fairly represent him and the unavailability of federal administrative remedies) require this Court to recognize a right for petitioner to bring this action in federal court. Yet, petitioner provides no authority for this argument other than a footnote, in *Jackson Transit Authority*, that clearly has no application. Also, the court has no jurisdiction to hear petitioner's claim that his union failed to represent him. Accordingly, there is no basis for this Court to grant certiorari.

ARGUMENT

I.

THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND OTHER FEDERAL COURTS OF APPEALS THAT REQUIRES THIS COURT'S REVIEW.

Petitioner contends that this Court should review the Seventh Circuit's holding because it supposedly conflicts with the decisions of other courts regarding the stigmatizing character of charges of incompetence raised at the time of petitioner's discharge. Petitioner attempts to manufacture a conflict by mischaracterizing the decision below as one in which the court mechanically excluded charges of incompetence from its definition of stigma and by misconstruing the allegedly "conflicting" decisions. No such conflict exists. This petition merely seeks a review of the evidence and findings of fact below. This is clearly not a basis for granting certiorari.

The decision of the district court, affirmed by the Seventh Circuit, held that petitioner's due process rights were not violated in that the statements made to the press at the time of petitioner's discharge were not stigmatizing and did not implicate petitioner's liberty interest. In its decision, the court recognized that a public employee is entitled to protect his liberty interest through a hearing to clear his name, if, in the course of discharging him, the government makes charges against the employee that "might seriously damage his standing and associations in his community." *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972).

In granting the CTA's motion for summary judgment, the court reviewed the articles and comments about which

petitioner complained and found that they accused the security force, as a whole, of incompetence and failure to curb various types of criminal conduct (C-3). The court engaged in a thorough analysis of all the facts, in the light most favorable to petitioner, and rejected petitioner's claim that the articles "implied collusion" in criminal acts and were thus stigmatizing. Instead, the court found that a city official explicitly stated that the security force was not being accused of stealing and that a reasonable person could not construe the statements as accusing the plaintiffs of dishonest acts (C-3; C-5, footnote 3). Accordingly, the court held that the comments were not stigmatizing. In addition, the court stated that the comments were further diluted by the fact that they were broadly directed towards the entire security department (C-4, C-5).

In his petition, petitioner admits that this Court has not addressed a case similar to the situation presented here. However, he asserts that the decision below is in conflict with decisions of other circuits. This argument is entirely without merit. There is no conflict or split of authority between the circuits. The decisions cited by petitioner to support his argument are so factually dissimilar to the present situation that they preclude any meaningful comparison.

In *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980), a director of an urban redevelopment organization was discharged by the organization's board after the city's Mayor publicly implicated the director as being responsible for missing public funds. The court of appeals reversed the lower court's order granting summary judgment in favor of defendant and stated that a material fact issue existed as to whether plaintiff had been stigmatized by the defendant's public comments.

The court found that at the time of plaintiff's discharge, public comments were made concerning the criminal investigation surrounding the missing public funds, that there were reports that the Mayor had called for plaintiff's dismissal but that his resignation was not accepted by the Board because plaintiff was cooperating with the criminal investigation and that the Mayor later reported plaintiff would be fired for failing to cooperate in the criminal investigation. The court found that under these circumstances, summary judgment was not appropriate because the articles suggested that plaintiff was responsible for the missing funds and that it was certainly arguable that plaintiff was publicly charged with illegal and immoral conduct.

It is difficult to perceive how petitioner could claim that the court in *Quinn* was "confronted with a fact pattern with identity to petitioner's." In the present case, 107 security department employees were discharged when their department was abolished. The public comments surrounding their discharge were that the department was ineffective and the employees were incompetent. These comments do not come close to the accusations made against plaintiff in *Quinn*, where he was reported to be the subject of a criminal investigation regarding missing agency funds and was attacked by the Mayor as being responsible for the missing money.

Here, as in *Quinn*, the court reviewed the comments complained of by petitioner in the light most favorable to petitioner. However, unlike *Quinn*, the facts in the present situation did not warrant a finding that the comments made about the entire department were stigmatizing to petitioner or other individuals.

In *Cox v. Northern Virginia Transportation Commission*, 551 F.2d 555 (4th Cir. 1976), the court affirmed a lower court's decision that a former deputy administrator of a regional transportation agency, who was discharged amid public allegations that she was directly responsible for serious financial wrongdoing at the agency, was deprived of her liberty interest without due process. At the time of plaintiff's discharge, public statements by the agency's commissioners tied plaintiff's discharge directly with the results of an investigation of a financial scandal in the department she headed. The court found that plaintiff was entitled to a hearing to clear her name and was wrongfully denied this right. In affirming the lower court's decision, the court in *Cox* stated that "[t]he fourteenth amendment's guarantee of liberty 'to engage in any of the common occupations of life' is offended when the state denies a hearing to a discharged employee whom it has accused publicly of dishonesty or immorality." 551 F.2d at 558.

Contrary to petitioner's assertion, there is no conflict between the decision in *Cox* and the present case. In *Cox*, the facts warranted a conclusion that plaintiff was publicly charged with dishonesty or theft at the time of her discharge. Here, the facts before the district court demonstrated nothing more than that the security guards were publicly accused of being ineffective and incompetent at the time the department was discontinued. The court below made a specific finding of fact that no public accusations were made which could be construed that the security guards were accused of any criminal activity. In the absence of such a finding, there is no conflict here with the Fourth Circuit's decision in *Cox*.

In the last case that petitioner claims conflicts with the decision below, *McKnight v. Southeastern Pennsylvania*

Transportation Authority, 583 F.2d 1229 (3rd Cir. 1978), a special investigator for a transit authority's security force was discharged for being intoxicated while at work and failing to perform designated duties. The discharged employee asserted in his complaint that these charges were communicated to others, that he was not given an opportunity to refute the allegations and that he was unable to obtain other employment due to the public comments.

The district court dismissed plaintiff's complaint on the basis that the public accusations about which he complained were not sufficiently stigmatizing and plaintiff appealed. The appellate court vacated the order of dismissal and held that the issue of whether the public charge of intoxication was sufficiently stigmatizing to constitute an infringement of liberty was a question of fact that could not be appropriately determined through a motion to dismiss. The court found that the lower court's decision was a premature finding of fact since there was no evidence before the court and that the complaint sufficiently set forth the elements of a cause of action.

It is painfully obvious that there is no conflict between the Third Circuit's decision in *McKnight* and the present case. Here, the district court refused to dismiss petitioner's complaint on the basis that his complaint stated a cause of action for deprivation of his liberty interest. However, the CTA subsequently moved for summary judgment and evidence was submitted to the court by both parties. The court reviewed the evidence in the light most favorable to petitioner and found that the comments complained of were not stigmatizing. The court decided this question of fact by reviewing the newspaper articles about which petitioner complained and found that a reasonable person could not construe the statements made by govern-

mental officials as statements that plaintiffs had been accused of any dishonest acts. The decisions in *McKnight* and the present case are totally consistent.

Accordingly, there can be no question that there is no split among the circuits that requires review by this Court. Petitioner's request for certiorari is obviously being sought merely to have this Court review the factual determination by the court below. The petition must be denied for that reason.

This Court stated in *United States v. Johnston*, 268 U.S. 220 (1925), "We do not grant certiorari to review evidence and discuss specific facts." 268 U.S. at 227. Here, petitioner is simply seeking this Court to review the findings of fact made by the district court, and affirmed by the court of appeals, that the statements about which petitioner complained were not stigmatizing. This is readily apparent from petitioner's argument, at pages 12 and 13, where he states:

> Equally plain is their need to examine the totality of facts attendant such a discharge to determine whether stigma has, in fact, been effected. Had such a review been performed instantly, where the totality of facts surrounding incompetence involved highly charged allegations and insinuations of theft and narcotics violations; it is respectfully submitted, that a meritorious infringement of liberty, would have been found.

The court below reviewed all of the facts surrounding petitioner's discharge and found that the statements were not stigmatizing. Petitioner simply seeks this Court to conduct another review.

This Court has often held that "a court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concur-

rent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Manufacturing Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). Petitioner has failed to show any error in the court's decision below, let alone an "obvious and exceptional" one. Accordingly, petitioner's request to have the findings of fact reviewed by this Court must be denied.

Similarly, petitioner's argument that two other circuits have adopted the Seventh Circuit's allegedly conflicting position is without merit. Once again, the cases cited by petitioner involve such divergent factual situations that no realistic comparative analysis is possible.

In *Debose v. United States Department of Agriculture*, 700 F.2d 1262 (9th Cir. 1983), a government agronomist was discharged for substandard performance and failure to improve after repeated warnings. The court reviewed the findings of the Merit Systems Protection Board upholding plaintiff's termination and found that plaintiff's liberty interest in future employment was not abridged. The court stated that there was no stigma attached to plaintiff because there was no public disclosure of the reasons for his discharge, citing *Bishop v. Wood*, 426 U.S. 341 (1976). Obviously, the lack of disclosure in *Debose* precludes any meaningful comparison with the other decisions.

Finally, in *Mazaleski v. Treusdell*, 562 F.2d 701 (D.C. Cir. 1977), the court did not, as alleged by petitioner, "delimit stigma to charges of dishonesty" and immoral conduct. Instead, the court simply discussed the types of cases in which other courts had determined whether the disclosure of the reasons for the employee's discharge affected the employee's liberty interest. The court concluded that on the basis of the facts presented for its review,

the plaintiff was not stigmatized by the charges of incompetence at the time of his discharge. The court did not limit its definition to specific types of situations but, instead, based its decision on the particular facts before it.

Thus, it is clear that there is no conflict between the decision below and the decisions of other courts cited by petitioner. Any difference in the opinions are due to the different fact situations in each. This is certainly not a basis for this Court to grant certiorari to review the decision below.

II.

THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER DID NOT HAVE A PROPERTY INTEREST IN HIS EMPLOYMENT.

Petitioner asserts that he had a protected property interest in his employment with the CTA which was violated by his discharge. This argument completely ignores the clear language in the relevant state statutes and misconstrues their application to the present set of facts.

The district court, affirmed by the Seventh Circuit, dismissed petitioner's claim that he had a protected property interest in his job by virtue of the Metropolitan Transit Authority Act, Ill. Rev. Stat. Ch. 111⅔, § 328, which provides that CTA employees may be discharged only for cause. The court specifically found that the just cause provision in § 328 did not govern the present situation because the CTA totally eliminated petitioner's job position. The court held that under Ill. Rev. Stat. Ch. 111⅔, § 327, the CTA has the authority to maintain a police force "from time to time as it may find necessary." The court concluded that the CTA properly exercised its statutory right to abolish the security force and in doing so, petitioner did not have a property interest in his job.

Petitioner's argument completely ignores the court's finding of fact that the just cause provision in § 328 does not apply to the instant matter. Instead, petitioner simply states in his argument that "there can be no dispute that petitioner received a protected property interest in his employment by virtue of" the just cause provision in § 328. Contrary to petitioner's misconceived assertions, this matter is not undisputed. Specifically, the court below found that petitioner has no property interest and that that section of the Act does not apply. Petitioner offers nothing to support his erroneous statement other than the statement itself.

In his argument, petitioner also admits that "[i]t is not disputed that the CTA had the right to establish or abolish any security force it may choose to create." However, petitioner incorrectly claims that he enjoyed a property interest to continued employment in any other positions with the CTA for which he could qualify pursuant to the provision in § 328. That section provides:

> The Board may abolish any office or reduce the force of employees for lack of work or lack of funds, but in so doing the officer or employee with the shortest service record in the class and grade to which he or she belongs shall be first released from service and shall be reinstated in order of seniority when additional force of employees is required. (Ill. Rev. Stat., Ch. 111⅔, § 328)

Petitioner's reliance on this provision is unfounded. To have a property interest in a benefit, "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth, supra,* 408 U.S. 577.

In this case the Metropolitan Transit Authority Act itself removes any legitimate claim of entitlement to continued employment in the event of a reduction in force. The Act provides two clear exceptions to a CTA employee's expectation that his employment is terminable only for cause: permanent discontinuance of a position for lack of funds or permanent discontinuance of a position for lack of work.

In either event, an employee's expectation is limited to termination with a *contingent* right of reinstatement in the event a future position is established. The cause is not within the employee's control and, by statute, is removed from any right of challenge under procedures applicable to discharges for cause. Thus, as a matter of law, employees terminated as a result of a reduction in force retain no legitimate expectations of continued employment under the Illinois Act. *See Lacy v. Dayton Board of Education*, 550 F. Supp. 835 (S.D. Ohio 1982) (statutory right to termination by order of seniority under Ohio reduction in force statute was insufficient to create a property interest subject to due process protection); *accord, Riggs v. Commonwealth of Kentucky*, 734 F.2d 262 (6th Cir.), *cert. denied*, 105 S. Ct. 184 (1984) (Kentucky statute permitting "lay-offs by reasons of lack of funds or work, or abolishment of a position" created no property right subject to due process protection).

The court below correctly determined that petitioner has no property interest in his job by virtue of the applicable State law. Petitioner had not provided any authority or convincing argument that compels this Court to overturn that decision.

III.

THE COURT OF APPEALS CORRECTLY DETERMINED THAT PETITIONER HAS NO RIGHT TO SUE UNDER SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED [49 U.S.C. SECTION 13(c)].

The district court, affirmed by the court of appeals, correctly held that this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15 (1982), clearly established that § 13(c) of the Urban Mass Transportation Act (UMTA), 49 U.S.C. Section 13(c), does not create federal causes of action for breaches of a § 13(c) agreement between UMTA recipients and transit unions. The court noted that the *Jackson* Court held that the legislative history indicates that Congress intended those contracts to be governed by state law applied in state courts. Accordingly, Count I of petitioner's complaint was dismissed due to the court's lack of jurisdiction.

Apparently, petitioner does not challenge the correctness of the court's application of *Jackson Transit Authority* to the present situation. Instead, petitioner appears to be arguing that special circumstances require this Court to virtually overrule *Jackson Transit Authority* and recognize petitioner's right to sue in federal court for alleged violations of the § 13(c) agreement.

The special circumstances claimed by petitioner are that his collective bargaining representative, Local 241, failed to pursue his remedies on his behalf and that there is no federal administrative remedy available to petitioner. This argument is frivolous and lacking in any support.

Petitioner offers no statutory basis or authority to support federal jurisdiction over his claim that his union failed

to adequately represent his interests. Jurisdiction of the federal courts to review an arbitration award or to entertain suits by individual employees against their bargaining representative for breach of a duty of fair representation arises by virtue of § 301 of the Labor Management Relations Act (29 U.S.C. § 185).[3] Under a long standing statutory exclusion, local governmental entities and their employees are excluded from coverage under § 301.[4] Accordingly, no federal jurisdiction exists to review petitioner's assertion that Local 241 "never took any action to negotiate, mediate or arbitrate the petitioner's rights" under the § 13(c) Agreement.

Also, petitioner's argument that his case warrants special consideration because there are no federal administrative remedies available, is not persuasive. Since Congress intended 13(c) agreements to be enforced by state law in state courts, it certainly would not be expected to provide a federal administrative remedy.

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[3] *See, e.g., the Steelworkers Trilogy* (review of arbitration awards): *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960). *See also Smith v. Evening News Ass'n*, 371 U.S. 195, 199-200 (1962); *Vaca v. Sipes*, 386 U.S. 171 (1967) (duty of fair representation).

[4] Section 301(a) provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction of the parties."

Section 2 of the Act provides that the term "employer" shall not include "any State or political subdivision thereof" (29 U.S.C. § 152(2)). Section 2 also provides that the term "employee" shall not include "any individual employed . . . by any other person who is not an employer as herein defined" (29 U.S.C. § 152(3)).

In claiming that special circumstances require this Court to virtually overturn its decision in *Jackson Transit Authority*, the only authority cited by petitioner is *Jackson Transit Authority* itself, at footnote 13. There, the Court stated, in part:

> While we hold that the union cannot sue in federal court to enforce its contracts, we express no view on the entirely separate question whether the Federal Government could bring a federal suit against a UMTA funding recipient for violating the terms of its grant agreement with the Government. Such a suit would involve a different contract from the § 13(c) agreement and the collective-bargaining agreement at issue in this case.

457 U.S. at 29 (citations omitted). This footnote clearly does not support petitioner's claim that "the Court has left open the possibility of some instances of a federal remedy" for an individual employee of a transit system. Instead, the Court simply stated that it was not addressing the question of whether the Federal Government could bring a federal suit to enforce a § 13(c) agreement and that such an action would not even involve a 13(c) labor agreement and collective bargaining agreement as present here. It is impossible to ascertain how petitioner can claim support for his argument from this, or any other portion of the decision.

Accordingly, it is clear that petitioner's argument is absolutely lacking in substance. Petitioner is seeking this Court to overturn its decision in *Jackson Transit Authority* and provides no support other than a footnote in the case itself. The petitioner's complaint was properly dismissed by the court below and there is no basis to grant this petition.

CONCLUSION

For the foregoing reasons, Respondent Chicago Transit Authority respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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